



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

TDD (804) 698-4021

www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4020
1-800-592-5482

VWP Individual Permit Number 09-1633

Effective Date: January 1, 2012

Minor Modification No. 1 Date: February 1, 2012

Expiration Date: December 31, 2027

VIRGINIA WATER PROTECTION PERMIT MODIFIED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner, and in compliance with § 401 of the Clean Water Act as amended (33 USC 1341) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

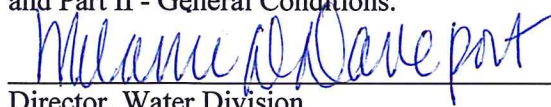
Permittee: Jordan Hydroelectric Limited Partnership

Address: P.O. Box 903, Gatlinburg, TN 37738

Activity Location: U.S. Army Corps of Engineers Intake Structure on the John W. Flannagan Dam and Reservoir on the Pound River, Dickenson County, Virginia.

Activity Description: The construction and operation of a hydroelectric generation facility and associated infrastructure on and adjacent to the Corps' existing intake structure in the John W. Flannagan Reservoir and the diversion of surface waters in the Pound River and Flannagan Reservoir for the purposes of hydroelectric power generation in accordance with current or future U.S. Army Corps of Engineers operations.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions.



Director, Water Division



Date

A. Authorized Activities

The following activities are authorized by this permit, as indicated in the application materials dated November 9, 2009, received by DEQ on November 16, 2009, and deemed complete by DEQ on March 12, 2010, as well as additional correspondence, dated March 2009 through May 2010, received from the applicant for the purposes of obtaining a federal hydropower generation license from the Federal Energy Regulatory Commission:

1. The construction and operation of a hydroelectric power generation facility and associated infrastructure on and adjacent to the existing U.S. Army Corps of Engineers facilities at John W. Flannagan Dam in the Pound River and Flannagan Reservoir, Dickenson County, Virginia, including:
 - a. the temporary impact of open waters in Flannagan Reservoir for the installation of a power generation module inside the existing intake structure at the gate operating level, that includes two two-foot diameter pipes each containing a turbine, associated piping attachments, support structure, generators, and screens; and
 - b. the construction of a control booth on the existing intake tower and construction of a pad-mounted substation adjacent to the access bridge beside the intake tower.
2. The non-consumptive diversion of surface water from the Pound River and Flannagan Reservoir, more specifically detailed in Part I.D.

B. Permit Term

1. This permit is valid for 15 years from the date of issuance. A new permit may be necessary for the continuance of the authorized activities, including water withdrawals, or any permit requirement that has not been completed. At least 120 calendar days prior to the expiration of this permit, the permittee shall notify DEQ in writing of his or her intent to continue one or more of the authorized activities. A new permit application may be required by DEQ at that time. DEQ, acting on behalf of the State Water Control Board, may issue a new permit or may issue a new permit with new or modified conditions, or the Board may deny the issuance of a permit at that time.
2. The State Water Control Board may reopen and modify, revoke, or terminate this permit if one or more of the following events occur, or in accordance with Part II.J of this permit:
 - a. The Federal Energy Regulatory Commission (FERC) issues, reissues, or modifies its license granted to Jordan Hydroelectric Limited Partnership for the Flannagan Hydroelectric Project during the term of this permit, where such issuance, reissuance, or modification results in a change to surface water release operations at Flannagan Dam or Reservoir.

- b. The United States Army Corps of Engineers (Corps) modifies its water quality release, flood control, or flow augmentation programs, procedures, or operations at Flannagan Dam or Reservoir.
- c. The United States Army Corps of Engineers (Corps) determines that the project cannot be designed, constructed, or maintained in a manner that does not compromise the existing Corps' infrastructure, or existing or future operations.
- d. Monitoring results suggest that changes to water quality parameters downstream of Flannagan Dam have occurred.
- e. DEQ determines that the project impacts beneficial uses in the Flannagan Reservoir or in the downstream Pound River. Mitigation may be required for such impacts.

C. Standard Project Conditions

- 1. The activities authorized by this permit shall be executed in such a manner that any impacts to beneficial uses are minimized. As defined in §62.1-10(b) of the Code, "beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.
- 2. Activities shall be conducted in accordance with any Time-of-Year restriction(s) as recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission. The permittee shall retain a copy of the agency correspondence concerning the Time-of-Year restriction(s), or the lack thereof, for the duration of the construction phase of the project.
- 3. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water.
- 4. No activity shall cause more than minimal adverse effect on navigation and recreation, and no activity shall block more than half of the width of the stream at any given time.
- 5. The activity shall not impede the passage of normal or expected high flows, and any associated structure shall withstand expected high flows.
- 6. All in-stream activities shall be conducted during low-flow conditions whenever practicable.

7. Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters.
8. All excavation, dredging, or filling in surface waters shall be accomplished in a manner that minimizes bottom disturbance and turbidity. Turbidity levels downstream of the construction site shall not exceed turbidity levels upstream of the construction site at any time.
9. All fill material authorized for placement in surface waters shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations
10. All construction, construction access, and demolition activities associated with this project shall be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters, unless authorized by this permit. Wet, excess, or waste concrete shall be prohibited from entering surface waters. An exception to this condition is the pouring of concrete within the confined area of a dewatered cofferdam, where the wet, unset concrete shall not come in contact with flowing water.
11. Temporary in-stream construction features such as cofferdams shall be made of non-erodible materials.
12. Stormwater runoff shall be prohibited from directly discharging into any surface waters. Best management practices (BMP) designed, installed, and maintained, as described in the Virginia Erosion and Sediment Control Handbook (Third Edition, 1992, or the most recent version in effect at the time of construction) and the Virginia Stormwater Management Handbook (First Edition, 1999, or the most recent version in effect at the time of construction), shall be deemed suitable treatment prior to discharge into surface waters. Installation of alternative practices not described in these references shall be submitted to DEQ for approval prior to beginning construction.
13. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction. These controls shall be placed prior to clearing and grading activities and shall be maintained in good working order, to minimize impacts to surface waters. These controls shall remain in place only until clearing and grading activities cease and these areas have been stabilized.
14. Heavy equipment is only authorized for use within stream channels during project construction when site conditions prohibit access from the streambank. The equipment shall be stationed on cobble bars and the activities conducted in the dry or during low flow conditions, whenever possible.

15. Heavy equipment is only authorized for use within open water during project construction when such equipment is utilized from the shoreline, or if site conditions prohibit access from the shoreline, when such equipment is stationed on floating barges, on temporary platforms requiring no fill or excavation in surface waters, or on existing permanent structures. The activities shall be conducted in the dry or during low flow conditions, whenever possible.
16. All *non-impacted* wetlands and streams that are within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated for the life of the construction activity within that area. All non-impacted open water areas within the project or right-of-way limits shall be clearly flagged or demarcated as practicable using temporary materials for the life of the construction activity within that area. The permittee shall notify all contractors and subcontractors that *no activities are to occur in these so-marked areas*.
17. Temporary disturbances to wetlands, stream channels, stream banks, open water, and shoreline during project construction activities shall be avoided and minimized to the maximum extent practicable.
18. All temporarily impacted streams and stream banks shall be restored to their original elevations and contours within 30 calendar days following the construction at that stream segment, and the banks shall be seeded or planted with the same vegetative cover type originally present along the banks, including supplemental erosion control grasses if necessary, but not including invasive species identified on DCR's Invasive Alien Plant Species of Virginia list. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the second year post-disturbance.
19. All materials (including fill, construction debris, excavated materials, and woody materials, but not including metal sheet piling) that are temporarily placed in wetlands, in stream channels, on stream banks, in open water, or on shoreline shall be placed on mats or geotextile fabric, shall be immediately stabilized to prevent the material or leachate from entering surface waters, and shall be entirely removed within 30 calendar days following completion of that construction activity. After removal of materials, and sheet piling if applicable, disturbed areas shall be returned to original contours, shall be stabilized, and shall be restored to the original vegetated state within 30 calendar days. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters, including submerged aquatic vegetation, through the second year post-disturbance.
20. Seeds used for all project activities shall conform to the Virginia Seed Law (Sections 3.1-262 Code of Virginia) and Virginia Seed Regulations (2 VAC 5-290-10 et seq).

D. Minimum Instream Flow Conditions

The permittee shall operate the authorized project as a run-of-river diversion of surface waters and in accordance with 1) U.S. Army Corps of Engineers' (Corps) direction for purposes of its existing water quality release, flood control, and flow augmentation programs; 2) any agreements made between the permittee and the Corps; and 3) the applicable Virginia Water Quality Standards (9VAC25-260 et seq). The diversion of available inflow for the authorized project shall not supersede the diversion made by the Corps for its program purposes and shall not impede the withdrawal of surface water from Flannagan Reservoir by the Flannagan Water Authority for purposes of public water supply. The permittee shall properly operate and maintain the project such that operation of the Corps' infrastructure is not hindered and flow into the existing structure from the necessary elevations is not impeded.

E. Monitoring, Notification, and Reporting

Monitoring

1. The permittee shall develop and implement a dissolved oxygen and temperature monitoring plan to be effective for the term of this permit, unless otherwise determined by DEQ. The plan shall be submitted for DEQ approval within 60 days of the effective date of this permit, and DEQ shall have 30 days to review the plan and either approve it or provide comments to the permittee. The plan shall address, but shall not be limited to addressing, the following requirements and provisions:
 - a. Schedule for monitoring: Monitoring shall occur for a minimum of three years, beginning within 7 days of the date on which DEQ approves the monitoring plan.
 - b. Monitoring methods and locations: Monitoring shall include continuous measurements of the average daily dissolved oxygen (milligrams per liter), the daily minimum dissolved oxygen value (milligrams per liter), and the average daily temperature (degrees Celsius), within two hundred feet of the United States Geologic Survey (USGS) Pound River below Flannagan Dam, Near Haysi, Virginia gaging station (No. 03209000), located downstream of Flannagan Dam on the Pound River. After DEQ review and approval of the third year's monitoring results, the permittee may request relief from further continuous monitoring. DEQ shall review the data submitted to date and either approve the request or provide comments within 30 days of receiving the request. The need for future monitoring shall be determined by DEQ at the time of the request for relief.
 - c. Contingency plans: The monitoring plan shall include contingency methods for meeting the monitoring requirements and collection of the necessary data. The permittee may utilize dissolved oxygen and temperature data collected by other parties, provided that the data is sufficient to ensure compliance with this permit. The monitoring plan shall also include contingency methods for resolving any adverse

effects to the downstream fishery or water quality, should the existing water quality parameters change.

- d. Reporting monitoring results: A report shall be prepared and submitted to DEQ after each year of monitoring that includes the monitoring results, any field observations made, any periods where contingency plans were implemented, and a summary of conclusions for the monitoring period. Reports shall be due within 30 days of conclusion of the monitoring year. DEQ shall have 30 days to review and comment on each annual report. DEQ comments may include suggestions or requirements for revising the DEQ-approved monitoring plan. Should relief from monitoring be granted, DEQ may also grant relief from future dissolved oxygen and temperature monitoring reporting. The need for future reporting shall be determined by DEQ at the time of receipt of any request for monitoring relief. The monitoring plan shall not relieve the permittee from reporting violations of water quality standards within 48 hours of detection.
2. The permittee shall conduct photographic monitoring of pre-construction conditions in permitted, temporary or permanent impact areas covered by this permit; of all work conducted in impact areas covered by this permit; and of post-construction conditions in impact areas covered by this permit. Photos shall also document any non-compliant events or problems encountered during the construction activities. For work being conducted in phases, or only in certain impact areas at the same time, monitoring may begin upon initiating work in those specific permitted impact areas.

The photos shall be of sufficient quantity to thoroughly document the environmental conditions and activities being conducted at the impact areas. Photographic monitoring shall be conducted by the following method: Enumerated photograph (photo) stations shall be established at each permanent or temporary permitted impact area and shall be consistent for the duration of construction activities. Photo stations may be established via water craft or temporary floating structures. Photos will be taken from the same directional orientation during each monitoring event. Each photo taken shall be labeled with the photo station number, the permitted impact location, the photo orientation, the date and time of the photo, the name of the person taking the photo, and a brief description of the activities being conducted at the time of the photo. If necessary, this information may be provided on (a) separate sheet(s) of paper attached to the photos.

Pre-construction photos shall be submitted with the ten-day notification (Part I.E.4) to DEQ that land disturbing or construction activities are planned to begin. Photos taken during construction activities shall be submitted as part of the construction monitoring reports detailed in Part I.E.11. Post-construction photos shall be submitted to DEQ within 30 days of completing construction in each impact area, which may or may not coincide with the submittal of a scheduled construction monitoring report.

Notification

3. Required notifications and submittals shall be submitted to the DEQ office stated below to the attention of the VWP permit manager:

Brenda K. Winn
VWP Permit Manager
Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

4. The permittee shall submit written notification at least ten calendar days prior to the initiation of activities in permitted areas. The notification shall include a projected schedule for initiating and completing work at each permitted impact area.
5. Any fish kills or spills of fuels or oils shall be reported to DEQ Southwest Regional Office immediately upon discovery at 276-676-4800. If DEQ cannot be reached, the spill shall be reported to the Virginia Department of Emergency Management (DEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802.
6. The permittee shall notify DEQ within 48 hours of the Corps making modifications to its operating procedures for release of water from Lake Moomaw. The notification shall include a description of the modification, the expected duration, and any changes made to the operation of the authorized project as a result of the modifications.
7. The VWP permit manager at DEQ Central Office shall be notified about and invited to participate on any committees, work groups, technical advisory groups, or stakeholder groups that are organized for the purposes of reviewing the authorized project, its operations, or the terms and conditions of the permittee's Federal Energy Regulatory Commission license, if issued. Notification of any such group events, including but not limited to meetings, hearings, and site visits, shall be provided a minimum of one week ahead of the scheduled event.
8. The permittee shall notify DEQ of any modifications of the project and any change to the facility operations that have the potential to result in surface water impacts; impacts to navigation and recreation; or impacts to karst features. Any impacts, modifications, or changes shall be subject to DEQ review and coordination with other appropriate resource agencies, and may result in modification of this permit, compensatory mitigation, or both.

Reporting

9. Prior to commencing any work in the Flannagan Reservoir for the authorized project, the permittee shall submit an electronic copy of any operation, maintenance, emergency plans, or operations agreements that are approved by the U.S. Army Corps of Engineers.

10. Final plans for the project activities authorized by this permit shall be submitted 60 calendar days prior to initiating any activity affecting permitted impact areas. Activities shall not be initiated in permitted impact areas until DEQ has both reviewed and commented on the plans, or until 30 calendar days have passed and DEQ has not provided comments regarding the plan. In the event DEQ submits comments on the final plans, construction shall not proceed until comments are resolved to DEQ's satisfaction.

Permitted activities shall be performed in accordance with the final project plans submitted to DEQ. Final project plans shall include the location and orientation of all photo monitoring stations. Any changes to the final project plans shall be submitted to DEQ immediately upon determination that the changes are necessary. DEQ approval shall be required prior to implementing the changes.

11. Construction monitoring reports shall be submitted to DEQ once per quarter of the calendar year throughout the construction period when work is conducted in impact areas. Each report shall be due no later than the 15th of the month that follows the end of the quarter for which the report is being prepared (for example, a report for first quarter activities is due by April 15th). The reports shall include the following, as applicable:

- a. A written narrative stating whether or not work, including installation and maintenance of erosion and sediment controls, was performed in each permitted impact area during the monitoring period. If work was performed, the narrative shall include a description of the major work items performed, when those items were initiated, when those items are expected to be completed, and any non-compliant events or problems encountered.
- b. A written summary of any corrective actions taken and any subsequent notifications to DEQ regarding non-compliant events or problems encountered during construction activities in permitted impact areas.
- c. A summary of anticipated work to be completed during the next monitoring period in all permitted impact areas.
- d. A labeled site map showing each permitted impact area where work activities occurred during the monitoring period and the photo stations used to document the activities.
- e. The photos taken during the monitoring period, per Part I.E.2.

12. All reports required by this permit and other information requested by DEQ shall be signed by the permittee, or a person acting on the permittee's behalf as a duly authorized representative with the authority to bind the permittee.

A person is a duly authorized representative only if 1) the authorization is made in writing by the permittee; AND 2) the authorization specifies either the named individual

or the named position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility.

If a change of the duly authorized representative occurs, the permittee shall immediately notify DEQ in writing, providing the new named individual or named position and contact information for the new duly authorized representative.

13. All submittals shall contain the following signed certification statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

14. All records and information that result from the monitoring and reporting activities required by this permit, including any maintenance activities, shall be retained for the permit term. The retention period shall be extended automatically during the course of any unresolved litigation regarding the regulated activities, or as requested by the board.

A. Duty to Comply

The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

B. Duty to Cease or Confine Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.

D. VWP Permit Action

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185 (VWP Permit Extension).
3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9 VAC 25-210-180 (Rules for Modification, Revocation and Reissuance, and Termination of VWP permits).

E. Inspection and Entry

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit; and
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to Provide Information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

G. Monitoring and Records Requirements

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include:
 - a. The date, exact place and time of sampling or measurements;

- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

H. Transferability

This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and reissuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur if:

1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

I. Property rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

J. Reopener

Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and

substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

K. Compliance with State and Federal Law

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

L. Severability

The provisions of this VWP permit are severable.

M. Permit Modification

A VWP permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur which are subject to "reopener clauses" in the VWP permit; or
6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

N. Permit Termination

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a VWP permit can be terminated for cause. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;
2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

O. Civil and Criminal Liability

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and Hazardous Substance Liability

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Unauthorized Discharge of Pollutants

Except in compliance with this VWP permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses;
4. On or after October 1, 2001 conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding;
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.